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January 12th, 1959

COCOM Document No. 2869.75

COORDINATING COMMITTEE

RECORD OF DISCUSSION

S. General

ON

THE REVIEW OF THE STRATEGIC EXPORT CONTROLS - EXCEPTIONS PROCEDURES

December 17th, 1958

Present: Belgium(Luxembourg), Canada, Denmark, France, Germany, Italy, Japan, Netherlands, United Kingdom, United States.

References: COCOM 471 (Revised), 1473, 2869.5, 2869.13, 2869.55, 2869.62.

1. The CHAIRMAN opened the debate by referring the Committee to the summary of the proposals made on exceptions procedures during the first round of discussions in October and November (Annex to COCOM 2869.62). He invited Delegates to give the views of their authorities on the United Kingdom proposal concerning general exceptions to the embargo, as amended by the Italian Delegation (paragraphs 1(a) and (c) of the Annex) and the United States proposal (paragraph 1(b) of the Annex).

2. The NETHERLANDS Delegate stated that his authorities considered that the addition of the word "social" as proposed by the Italian Delegation was not necessary, since the type of problem to which it was intended to refer was amply covered by the word "economic".

3. The UNITED STATES Delegate said that his authorities still preferred their own proposal (paragraph 1(b) of the Annex). They had accepted the principle of replacing quid pro quo as the sole condition by a reference to political, economic, and social factors of overriding importance. The Delegate might be able to submit a redraft of his authorities' proposal, in an effort to overcome the remaining difference between the United States proposal and the text put forward by the United Kingdom, during or shortly after the Christmas recess.

4. The BELGIAN Delegate said that his Government had some difficulty with the question of abolishing the quid pro quo requirement. They would find it easier to accept the principle of political, economic and social factors if the new text embodied certain terms which appeared in the preamble to the United Kingdom memorandum (COCOM 2869.55) but which were not included in the proposed text itself. He suggested that the wording should be modified as follows:

"Subject to the special considerations laid down in the Committee's Principles and procedures, exceptions to the general rule of embargo in respect of List I items should only be made when the exporting country has satisfied itself that a refusal would involve a risk of serious damage to its political, economic or social well-being. No decision would be taken before the Committee had expressed its views as to the decisive nature of the political, economic or social factors militating in favour of the contemplated export."

General acceptance of this wording would greatly help his authorities because it insisted on the exceptional character of the request.

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5. The CANADIAN Delegate said that his authorities considered the United States proposal too rigid. They therefore supported the United Kingdom proposal and were open-minded as to the inclusion of the word "social".
6. The NETHERLANDS Delegate supported the text put forward by his Belgian colleague. He said that he could agree to the addition of the word "social" in view of the opinion of the majority of the Committee but he wished his previous remarks to remain on record.
7. The DANISH, GERMAN and ITALIAN Delegates reiterated their acceptance of the United Kingdom text. They were not in a position to agree to the Belgian proposal without referring to their authorities.
8. The GERMAN Delegate pointed out that he rather preferred the wording as stated in the United Kingdom text (COCOM 2869.55). This wording made it clear that exception should be made only when the exporting country has satisfied itself that the political and economic factors and, as proposed, the social factors in favour of the export are of overriding importance, being understood that a full account would be taken of the views expressed by Member Governments.
9. The FRENCH Delegate stated that he had been instructed to accept the text proposed by the United Kingdom, together with the addition of the word "social". His authorities considered that social factors could be of very great importance in influencing a decision.
10. The UNITED STATES Delegate said that in accepting the reference to social factors in the new text, he understood that what the Committee would have in mind would be situations combining political and economic factors, themselves often difficult enough to distinguish. In particular, he assumed the Italian Delegation had in mind situations of serious unemployment causing social unrest and having political repercussions. He continued that the important difference between the United Kingdom and United States proposals was that the former explicitly referred to decision by the exporting country while the latter referred to decision "only after Committee agreement". He appreciated the sensitivities of Delegations on the latter score, and hoped the matter might be taken care of by proper drafting. Under the provisions of COCOM 471 Revised there was a very strict test that had to be met before an export was authorized. The United States proposal should be looked at in terms of the introduction now of broader factors into consideration of exceptions, and in the light of the large recent reduction in the lists. Similar thinking seemed to underlie the part of the Belgian proposal that read: "No decision would be taken before the Committee expressed its views ...".
11. In reply to the statement made by the United States Delegation the GERMAN Delegate pointed out that in the past there had been very few cases where the unwritten understanding of unanimity in exception cases or agreed rules had not been observed. The only one major case where the rule was changed without unanimity was after a political decision at a very high level had been taken. Although in COCOM 471 Revised there was no mention of unanimity and the procedure even provided for the theoretical possibility of making an export of extreme urgency without first consulting the Committee, this provision had remained a theoretical one. He felt that there was no need to introduce the notion of unanimous agreement since this amounted to the transfer of the last decision from Member Governments to the Committee and might thereby pose very difficult legal problems.

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12. After further discussion, the CHAIRMAN summed up by saying that the Canadian, Danish, French, German, Italian, Japanese and United Kingdom Delegations were in favour of the United Kingdom text with the Italian modification; the Belgian and Netherlands Delegations favoured the Belgian text, while the United States Delegation remained in favour of their own proposal. He reminded the Committee that there were the following three proposals to be taken into consideration when resuming the discussion:

- (a) The United Kingdom text with the Italian modification.
- (b) The Belgian proposal.
- (c) The United States proposal, of which a redraft might be submitted.

13. The COMMITTEE decided to continue the discussion on January 8th, 1959.

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